

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Application for Review of Decision of)	CC Docket No. 02-6
The Schools and Libraries Division of the)	
Universal Service Administrative Company)	
)	
Appeal of Administrator's Decision on Appeal)	
Funding Year 1999-2000)	
Funding Request Numbers: See Attachment 1)	
Form 471 Application Number: 140214)	
Applicant Name: Dade County Public Schools)	
Billed Entity Number: 127722)	

APPEAL OF SPRINT-FLORIDA, INC.

Sprint-Florida Inc. ("Sprint"), pursuant to Section 54.719 of the Commission's Rules, hereby respectfully appeals the above-referenced Decision on Appeal served on Sprint by the Universal Service Administrative Company (USAC, or Administrator) on October 18, 2005 ("USAC October 18, 2005 letter").¹ In this letter, USAC has requested that Sprint return an additional \$83,525.04 in Internal Connections funds that USAC claims were disbursed in error. This decision was based on a determination by USAC that a physical inventory performed by the applicant is "more accurate" (USAC October 18, 2005 letter, pp. 2-3) than is a comprehensive audit performed by Sprint, which was based on "installation documents" (*id.*).

¹ The October 18 letter is included as Attachment 2.

USAC's findings here should be overturned for three reasons. First, there can be no guarantee that equipment installed 5 or 6 years ago would still be on school premises, and there is no indication that any attempt was made to determine the disposition of equipment not physically located in the schools surveyed. Second, Sprint has no means of verifying the overall accuracy of Miami Dade's "physical inventory;" however, based on the extremely limited information that was provided to Sprint, it is apparent that at least some of the information generated is incorrect or irrelevant. Third, USAC's reimbursement calculations are based on the equipment's total retail price, rather than on the reimbursable amount (that is, excluding the applicant's share of the purchase price), and before volume and manufacturer's discounts, that was invoiced to USAC by Sprint.

1. Background and Introduction

In 2003, USAC performed an on-site audit of 21 sampled Miami Dade public schools. USAC was unable to locate or verify the existence of certain Internal Connections equipment (Analog Systems Modules (ASMs) and Analog Terminal Adapters (ATAs)) for which E-rate funds had previously been disbursed, and in June 2003, served Sprint with a request for recovery of approximately \$425,000 in erroneously disbursed funds relating to installation of ASMs and ATAs in 156 Miami Dade public schools. Upon receipt of this Commitment Adjustment (COMAD) request, Sprint undertook a comprehensive internal audit of all of its E-rate transactions with Miami Dade – an analysis that went far beyond the ASM/ATA issue raised by USAC for funding year 1999. Based on the results of our self-initiated internal audit, Sprint voluntarily repaid USAC \$1.3 million in E-rate funds to compensate for ASM and ATA billing errors and for other transactions (even those involving indisputably eligible

equipment or services) for which complete documentation was not found. In its October 18, 2005 letter, USAC now demands that Sprint repay E-rate funds disbursed for 143 ASMs, and 617 ATAs not physically located by Miami Dade in its public school buildings.

As discussed below, Sprint has serious misgivings about the accuracy of the information on which USAC's most recent decision was based. A *post hoc* physical inventory relating to equipment installed 6 years ago in a very large school district may reasonably be viewed with substantial skepticism -- particularly when the physical inventory results conflict with documentation generated at the time that the equipment was installed. Furthermore, because Sprint is not privy to any information whatsoever relating to the physical inventory (methodology, scope, qualifications of the surveyors, or anything other than the two or three sentences from USAC summarizing Miami Dade's efforts), we have no way of evaluating this effort. To the extent that USAC is demanding additional repayment based on this information, due process requires that Sprint have an opportunity to review and rebut this information. Finally, the reimbursement calculations made by USAC are significantly inflated because they are based on incorrect prices for the ASMs and ATAs.

These factors make clear that this most recent COMAD demand for \$83,525.04 is unreasonable and not fully fact-based. USAC's decision here should accordingly be overturned.

2. A Physical Inventory Performed Several Years After the Fact Is Unlikely to Accurately Reflect Actual Equipment Installation.

According to the description provided by USAC to Sprint, Miami Dade performed a physical inventory of its 156 schools, and found 481 ASMs and 7 ATAs “*currently installed* at these schools” (USAC October 18, 2005 letter, pp. 2-3, emphasis added). Sprint has previously acknowledged that 93 of the 624 ASMs sold to Miami Dade were subsequently returned to Sprint, and we have already reimbursed USAC for this equipment, as well as for funding related to all 624 ATAs.² Even assuming *arguendo* that Miami Dade’s physical inventory is accurate, USAC cannot conclude from this *post hoc* review that the 531 ASMs in question (624 originally requested less the 93 subsequently returned) were not installed and put to use in funding year 1999. USAC completely ignores the fact that over the past several years, the “missing” equipment could have been replaced with upgraded equipment; transferred to schools outside the 156 locations surveyed; removed because of damage (*e.g.*, hurricane-related) to the school building or to the equipment; or lost because of vandalism.

The Commission itself has concluded that “three years is a reasonable period for a recipient to retain equipment purchased with internal connections discounts,”³ and thus it is entirely reasonable to expect and assume that some of the equipment at issue here would have been replaced or removed from their original locations. Indeed, the three-

² See Sprint’s Supplemental Response to Notice of Appeal, dated January 26, 2004, pp. 4-6.

³ *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 26912, 26924 (n. 52) (2003). In this Order, the Commission stated that applicants may “freely” transfer equipment purchased with E-rate funds “to other eligible entities” three years or more after the purchase of such equipment, so long as the transfer is not “in consideration of money or anything else of value” (*id.* at 26923-4 (para. 26)).

year equipment retention requirement did not become effective until 2004; prior to that, there were no limitations on how long an applicant had to use E-rate internal connections equipment in its original location. Thus, the equipment at issue here could have been removed from any of the 156 Miami Dade schools any time after installation in 1999, with a minimal or non-existent paper trail,⁴ without necessarily violating the Commission's rules.

Given the time that has elapsed since equipment installation, and the looseness of the rules relating to use of internal connections equipment in the original location in effect during funding years 1999-2003, it is hardly surprising that not all of the 156 locations inventoried still had all of the ASMs installed by Sprint. Under these circumstances, it is unreasonable for USAC to hold Sprint accountable for the disposition over the past 6 years of equipment that Sprint neither owned nor had control over.

Sprint also vehemently disputes USAC's finding that Miami Dade's determinations are "more accurate" than the comprehensive analysis performed by Sprint because Miami Dade's study was based on a physical inventory whereas Sprint's study was based on installation documents (USAC October 18, 2005 letter, pp. 2-3). A physical "snapshot" inventory of equipment that can be moved, which was performed several years after equipment installation and as part of a COMAD investigation, is arguably *less* reliable than are the reams of documents (ordering, shipping, installation, and billing records) generated at the time the equipment was actually installed and years before the original

⁴ In cases of transferred equipment, the rule requiring both the transferring and receiving entities to maintain records documenting the transfer for a period of five years did not become effective until 2004.

COMAD request was issued. Indeed, USAC has never indicated to Sprint that any of the audit information which Sprint provided was deficient or unreliable in any way. Because it does not appear that any reconciliation of the two sets of information (physical inventory and installation documents) was even attempted, there is no basis for concluding that the “missing” ASMs were never installed. At a minimum, both sets of evidence should be taken into consideration in order to develop the most comprehensive reconstruction of what actually transpired.

3. Miami Dade’s Physical Inventory Has Not Been Validated By Sprint.

Sprint did not participate in Miami Dade’s physical inventory; was not advised of the scope or methodology of the study; did not receive a copy of the report; and was not asked for comments on or a rebuttal response to the report. Sprint has no information on when the physical inventory was conducted;⁵ how exhaustive a search was performed (did the surveyors visit each of the 156 schools, or did they simply call someone at each school to ask if the equipment was physically present? If they made an actual site visit, did they look in only one room of each campus, or survey the entire physical plant to locate the equipment in question?); the identity of the surveyors (school district personnel, or employees of an independent accounting or consulting firm?); the qualifications of the surveyors and their familiarity with either E-rate rules or network equipment; whether the surveyors examined E-rate files and records, and/or interviewed school and school district personnel, or simply checked whether the equipment was

⁵ Sprint assumes that the physical inventory was conducted no earlier than 2003, when the COMAD issue first arose, and possibly (even likely) as late as September 2005, given the release date of the instant COMAD request and the fact that the inventory reviewed “currently installed” equipment.

physically on the site; or even whether Miami Dade has in its possession equipment disposition records which account for the 50 “missing” ASMs.⁶

In fact, the sum total of Sprint’s knowledge of Miami Dade’s study, and of USAC’s review of Miami Dade’s study, is contained in the two paragraphs in the USAC October 18, 2005 letter. Insofar as Miami Dade is not requesting any refunds from Sprint, it (Miami Dade) is under no obligation to provide Sprint with its report. However, to the extent that USAC is demanding that Sprint repay additional monies based on the contents of this report, due process requires that the relevant information be made available to Sprint.

Although Sprint is totally in the dark regarding the specifics of the physical inventory performed, even the scant information provided in the USAC October 18, 2005 letter points out a fatal flaw associated with relying only on a physical inventory. Miami Dade located seven ATAs installed at various of its schools (USAC October 18, 2005 letter at p. 3). However, as Sprint has previously advised USAC, Sprint *neither bid on the provision of ATAs nor installed any ATAs* to Miami Dade in funding year 1999.⁷ Thus, it is clear that no attempt was made to match equipment currently in place with equipment that was actually installed in funding year 1999, and that the physical inventory results alone do not accurately track what specific equipment was provided by which specific service provider, or when that specific equipment was installed. It is entirely possible

⁶ As noted above, 93 of the original 624 ASMs were returned to Sprint. 481 ASMs were physically located, leaving 50 physically unaccounted for.

⁷ See Sprint’s January 26, 2004 Supplemental Response, p. 4. Nevertheless, because the invoices submitted to USAC incorporated the full funding commitment, Sprint previously repaid USAC for the entire reimbursable cost of 624 ATAs (\$62,787.14).

that equipment provided by Sprint in funding year 1999 was replaced by equipment provided by another entity (or was removed and not replaced) – a circumstance that would not be captured by sole reliance upon a physical inventory of *currently installed* equipment.

4. The Recovery Amount Is Based on Incorrect ATA and ASM Prices.

USAC states that it disbursed \$703.83 per ASM and \$132.47 per ATA to Sprint (USAC October 18, 2005 letter, pp. 2-3). Although USAC does not explain the basis of its calculations, it appears that the figures used were the retail prices (the amount paid by USAC and the applicant combined, and, in the case of the ASMs, prior to application of a manufacturer's discount), rather than the far smaller amount actually received by Sprint from USAC.

The invoices submitted by Sprint to USAC were only for that portion of the cost eligible for reimbursement by USAC; it did not include the amount payable by the applicant. The average E-rate discount percentage for all of the Miami Dade schools involved in the original COMAD request was 75.96%.⁸ Thus, USAC has inflated the amount it claims it is due by 24.04% because of this one factor alone.

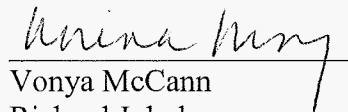
In addition, the retail ASM price which USAC apparently used in its COMAD calculations does not reflect the manufacturer's discount (and possibly, an additional volume discount as well) applied. The net price charged to USAC and the applicant combined was \$510.59 per ASM (\$387.84 to USAC alone), not \$703.83 as used by USAC.

⁸ See Sprint January 26, 2004 Supplemental Response, p. 5.

Sprint has already reimbursed USAC in full for the invoiced, E-rate eligible portion of all ATA-related amounts, as well as for the 93 ASMs returned.⁹ As explained above, it has not been proven that the 50 ASMs that were physically unaccounted for in the Miami Dade study were not installed in 1999 (to the contrary, the record evidence provided by Sprint shows that these units were in fact installed), and it is unreasonable to hold Sprint accountable for these 50 ASMs. The \$83,525.04 demanded by USAC in the instant COMAD request is without basis, and this request should be overturned.

Respectfully submitted,

SPRINT-FLORIDA, INC.


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December 1, 2005

⁹ *Id.*, pp. 5-6.

ATTACHMENT 1

Funding Request Number(s):

219043, 219046, 219051, 219055, 219059, 219068, 219069, 219072, 219078, 219080, 219081, 219082, 219085, 219089, 219091, 219093, 219095, 219100, 219105, 219109, 219114, 219124, 219134, 219137, 219139, 219141, 219144, 219146, 219149, 219152, 219153, 219154, 219155, 219156, 219157, 219160, 219168, 219187, 219188, 219189, 219190, 219191, 219192, 219193, 219194, 219195, 219196, 219197, 219199, 219201, 219202, 219203, 219206, 219223, 219230, 219232, 219233, 219242, 219243, 219245, 219246, 219247, 219248, 219250, 219253, 219256, 219259, 219260, 219261, 219265, 219266, 219267, 219268, 219269, 219270, 219272, 219273, 219275, 219276, 219277, 219279, 219281, 219282, 219283, 219284, 219437, 219439, 219440, 219441, 219442, 219443, 219444, 219445, 219447, 219448, 219449, 219450, 219451, 219452, 219453, 219454, 219455, 219456, 219458, 219459, 219461, 219463, 219464, 219466, 219467, 219469, 219474, 219476, 219477, 219480, 219484, 219485, 219486, 219488, 219489, 219490, 219491, 219492, 219495, 219496, 219499, 219502, 219504, 219506, 219507, 219510, 219512, 219513, 219530, 219531, 219532, 219534, 219535, 219536, 219539, 219546, 219550, 219554, 219556, 219557, 219558, 219559, 219560, 219562, 219564, 219566, 219568, 219571, 219573, 219575, 219576

ATTACHMENT 2



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal
Funding Year 1999-2000

October 18, 2005

Christopher D. Schneider, Esq.
Michael P. Allen, VP Law
Nancy L. Shellady, VP Law
Sprint Corporation
6450 Sprint Parkway
Oakland Park, KS 66251

Re:	Applicant Name:	Dade County Public Schools
	Billed Entity Number:	127722
	Form 471 Application Number:	140214
	Funding Request Number(s):	See Attachment
	Your Correspondence Dated:	August 28, 2003 and January 26, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 1999 Recovery of Erroneously Disbursed Funds (REDF) Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): See Attachment
Decision on Appeal: **Denied**
Explanation:

- On appeal, Sprint originally argued the USAC recovery amount for erroneously disbursed funds associated with the Miami-Dade County Public Schools in an appeal letter dated August 28, 2003. A supplement to this appeal was submitted by Sprint on January 26, 2004. In the supplement, you reported the results of the comprehensive Sprint internal audit, conducted as a result of the USAC recovery request. You state that as an initial matter, Sprint argues that USAC should not have used the list price for Analog Systems Modules (ASMs) and Analog Terminal Adapters (ATAs) listed within the Item 21 attachment, but rather should have used the volume discount indicated at the bottom of the Item 21 attachment. With respect to the installation of ASMs, you state

that Sprint's bid to Miami-Dade and Miami Dade's Form 471 indicated that Sprint would provide four (4) ASMs at each school location. However, Miami-Dade returned ninety-three (93) ASMs previously installed as part of the approved key system package. With respect to the installation of ATAs, you state that per Sprint's installation documents no ATAs were ever installed at the 156 school locations listed on the FCC Form 471. Invoices submitted to USAC, however, sought payment for the full funding commitment, and therefore, included the cost of four (4) ATAs per school. You state that Sprint will, therefore, refund USAC the full cost based on this computation:

Analog Systems Modules (ASMs)

Unit Price after all volume discounts and trade-in credit = \$510.59

\$510.59 x 93 ASMs returned = \$47,484.87

\$47,484.87 x 75.96% average discount = \$36,069.50

Analog Terminal Adapters (ATAs)

\$150.00 unit price x 4 ATAs per school = \$600.00

\$600.00 per school value - 11.69% volume discount = \$529.86

\$529.86 x 156 schools included in USAC recovery request = \$82,658.16

\$82,658.16 x 75.96% average discount percentage = \$62,787.14

Sprint's internal audit covered all E-Rate transactions with Miami-Dade County Public Schools. As a result of this audit, Sprint identified a number of other issues and has repaid USAC \$1,245,779.00. This check, submitted to USAC on March 8, 2004, included overpayments with respect to services provided to Miami-Dade County Public Schools and included the \$36,069.50 overpayment of ASMs and \$62,787.14 overpayment of ATAs.

Analog Systems Modules Determination

- After a thorough review of the appeal and all relevant supporting documentation, it has been determined that based on the funds disbursed to Sprint, six hundred twenty-four (624) ASMs should have been installed at the 156 school locations. Miami-Dade's physical inventory of the 156 locations indicated that four hundred eighty-one (481) ASMs were currently installed at these schools. It has been determined that the SLD will accept the Miami-Dade determination that recovery be sought for one hundred forty-three (143) ASMs. Also, since Miami-Dade conducted a physical inventory, whereas you (Sprint) relied on installation documents, Miami-Dade's determination is the more accurate one based on the course of conduct indicating that Sprint would deliver and/or install the equipment, and then Miami-Dade would return some portion of the equipment to Sprint. Consequently, USAC will seek recovery based on Miami-Dade's inventory for one hundred forty-three (143) ASMs. USAC paid Sprint \$703.83 per ASM. Consequently, USAC had sought recovery based on this amount. You indicate that recovery should be based on \$510.59 per ASM. USAC will seek recovery based on \$703.83 per ASM because this is the amount originally disbursed.

Analog Terminal Adaptors Determination

- It has been determined that based on the funds disbursed to Sprint, six hundred twenty-four (624) ATAs should have been installed at the 156 school locations. Miami-Dade's physical inventory of the 156 schools indicated that seven (7) ATAs were currently installed at these schools. It has been determined that the SLD will accept the Miami-Dade determination that recovery be sought for six hundred seventeen (617) ATAs. Also, since Miami-Dade conducted a physical inventory, whereas you (Sprint) relied on installation documents, Miami-Dade's determination is the more accurate one based on the course of conduct indicating that Sprint would deliver and/or install the equipment, and then Miami-Dade would return some portion of the equipment to Sprint. Consequently, USAC will seek recovery based on Miami-Dade's inventory for 617 ATAs. USAC paid Sprint \$132.47 per ATA. Consequently, USAC had sought recovery based on this amount. You indicate that recovery should be based on the cost of \$529.86 per school for four (4) ATAs per school. USAC will seek recovery based on the cost of \$132.47 per ATA because this is the amount originally disbursed by USAC. Consequently, your appeal is denied.

Dollar Analysis for Above

Original Amount of Recovery Sought Based on Audit	\$424,888.30
Number of ASMs USAC disbursed funds to Sprint	624
Number of ASMs in M-DCPS actual inventory	- 481
Number of ASMs not located at M-DCPS	143
Cost Per ASM	\$703.83
Total to be recovered relating to ASMs	\$100,647.69
Number of ATAs USAC disbursed funds to Sprint	624
Number of ATAs in M-DCPS actual inventory	- 7
Number of ATAs not located at M-DCPS	617
Cost Per ATA	\$132.47
Total to be recovered relating to ATAs	\$81,733.99
Total to be Recovered for ATAs and ASMs	\$182,381.68
Amount recovery reduced based on the outcome of the appeal:	\$242,506.62
Amount Sprint Returned relating to ASMs	\$36,069.50
Amount Sprint Returned relating to ATAs	\$62,787.14
Total Returned by Sprint relating to ASMs and ATAs	\$98,856.64
Balance to be Recovered	\$83,525.04

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Attachment

Funding Request Number(s):

219043, 219046, 219051, 219055, 219059, 219068, 219069, 219072, 219078, 219080, 219081, 219082, 219085, 219089, 219091, 219093, 219095, 219100, 219105, 219109, 219114, 219124, 219134, 219137, 219139, 219141, 219144, 219146, 219149, 219152, 219153, 219154, 219155, 219156, 219157, 219160, 219168, 219187, 219188, 219189, 219190, 219191, 219192, 219193, 219194, 219195, 219196, 219197, 219199, 219201, 219202, 219203, 219206, 219223, 219230, 219232, 219233, 219242, 219243, 219245, 219246, 219247, 219248, 219250, 219253, 219256, 219259, 219260, 219261, 219265, 219266, 219267, 219268, 219269, 219270, 219272, 219273, 219275, 219276, 219277, 219279, 219281, 219282, 219283, 219284, 219437, 219439, 219440, 219441, 219442, 219443, 219444, 219445, 219447, 219448, 219449, 219450, 219451, 219452, 219453, 219454, 219455, 219456, 219458, 219459, 219461, 219463, 219464, 219466, 219467, 219469, 219474, 219476, 219477, 219480, 219484, 219485, 219486, 219488, 219489, 219490, 219491, 219492, 219495, 219496, 219499, 219502, 219504, 219506, 219507, 219510, 219512, 219513, 219530, 219531, 219532, 219534, 219535, 219536, 219539, 219546, 219550, 219554, 219556, 219557, 219558, 219559, 219560, 219562, 219564, 219566, 219568, 219571, 219573, 219575, 219576

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPEAL OF SPRINT-FLORIDA, INC.** was filed with the FCC by electronic mail and copies sent by electronic mail and by U.S. first-class mail, postage prepaid, on this the 1st day of December 2005 to the parties listed below.


Christine Jackson

December 1, 2005

SENT VIA E-MAIL

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